The STAMP REGULATION AMENDMENT BILL.

Mr. Thanu Pillai.—Before entering upon the next business in the agenda, I beg permission to make a small motion in regard to the Stamp Bill which was referred to a Select Committee at the last meeting. One of the members of the Committee, Mr. Ramanatha Rao, has vacated his seat in the Council. I would move that Mr. Ramier take Mr. Ramanatha Rao's place on the Select Committee.

Mr. Krishnaswamy Rao.—I would add Mr. Sankara Menon also.

Mr. Thanu Pillai.—Yes: By all means.

Seconded by Mr. Nagam Aiya.

Carried.

WILLS BILL.

Mr. Ramier.—I beg to move that the Bill be sent back to a Select Committee for reconsideration. It is not without very great diffidence I venture to make this motion. I am fully alive to the fact that this Bill had engaged the serious attention of the Council at its various stages and ordinarily I should have been very slow in making a motion of the kind. But on a very careful and close study of the Bill, I feel great doubts on some of the most important points involved in the Bill and it is therefore I venture to beg you to give your further consideration to those points. The Bill excludes from its scope the wills of Europeans and Americans. The reason alleged is that they have got their own law on the subject. The first question that suggests itself is 'what is the definition of a European?' Is it meant to denote those of European domicile alone or those of European descent also? I fear there would arise very great difficulty in reference to this question. Many of those in the country who are ordinarily styled Eurasians would be, strictly speaking, Europeans, if by Europeans it is meant Europeans by descent, and, I daresay, it is not intended to exclude them from the scope of this Bill. Again as regards Europeans as ordinarily understood, I believe it is an undoubted law that, on the principle of *lex loci re situ*, it is the law of the country where the immoveable property is situate that ought to apply for testamentary as well as intestate succession of property. If an Englishman owns landed property in British India, it is the Indian Succession Act that will govern the testamentary disposition of that property and not the English Wills Act. Suppose that an Englishman having British Indian domicile owns landed property in Travancore and makes a testamentary disposition of the same. In case of dispute, which law is to govern the same—English law or the Indian succession Act? I think neither of them can strictly apply. It may be said that the principles of the English law or the Indian Succession Act may be followed as the common or unwritten law applying to such people in Travancore. But here again there is another difficulty. I find there are various points of divergence between the English law and the Indian Succession Act in reference to execution, attestation and other matters connected with wills. The following are a few of such diffierences.

1. According to section 50 of the Indian Succession Act a person making the signature for the testator must be some other than the attesting witness. But in England an attesting witness might also be the person who signs for the testator (Vide p. 88. Henderson—Testamentary Devises.)

2. In reference to the position where the signature of the testator has to be affixed; under the Indian Succession Act the signature may be placed any where in the writing; only it should appear that it was intended to give effect to it as a will; whereas under the English Act, the signature "shall be so placed at or after or following or under or beside or opposite to the end of the Will".

3. In reference to the mode of affixing the signatures of the attesting witnesses, the Bombay and Calcutta High Courts have held that under the Indian Succession Act, "It is necessary for the validity of a will that the signature as distinguished from the mere mark, of at least two witnesses, must appear on the will". In England it has been held that a will is sufficiently attested by a mark although the witnesses were capable of writing. (Vide p. 92. Hend.)

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4. Privileged wills under the English law remain operative unless expressly revoked, although the maker of the will remains in England several years, after the date of the will. But the Indian Succession Act expressly provides that a nuncupative will shall be void at the expiration of one month after the testator shall have ceased to be entitled to make a privileged will. Many more instances of such divergence may be quoted, but I hope what I have already pointed out would be sufficient to show how difficult it would be for our Courts to decide as to the applicability of the law in case of the wills of Europeans should the question arise. I need hardly add that a large extent of landed property in the country is owned by Europeans and my friend Mr. Prince will bear me out when I say that several wills are being written in reference to those properties; and it is nothing but likely that questions might arise in our courts in reference to them. Thus I think, Sir, it has to be seriously considered whether we would be justified in excluding from the scope of the Bill, the wills of Europeans and others. In reference to the other points which require further consideration you will have already observed from my paper of amendments and the memo attached thereto, what they are and I shall not detain you just now by dwelling upon them at length. Now the only question to be considered is whether these points can be conveniently considered in the Council or it could be relegated to a Committee. It seems to me a Committee may more conveniently deal with these questions and bring their decision formally before the Council. I think there are not wanting precedents for such a course and my asking you to agree to the course is due to the fact that there is rather a large number of points that require your consideration.

Mr. Nagam Aiya seconded.

Mr. Krishnaswamy Rao.—Considering the long list of amendments suggested I think it would be an advantage to consider them in Select Committee.

President.—Some of the amendments seem to affect the integrity of the Bill as it now stands and I think it desirable to have them considered once for all by the whole Council. Instead of a separate Committee the Council may go into Committee and consider the amendments and suggestions.

Resolved accordingly that the consideration of the Wills Bill be adjourned to the following Tuesday and Wednesday.

LEGISLATIVE COUNCIL REGULATION AMENDMENT BILL.

Mr. Krishnaswamy Rao moved that the Bill as amended by the Select Committee be taken into consideration.

The motion was put and agreed to.

Section 7.

Mr. Sankara Menon.–The first amendment is in regard to section 7. The proper place of para 4 of the section is, it will be seen, immediately after the second para with which it is directly connected. The proper sequence is secured without disturbing the present order by making the para an Explanation. I would accordingly propose that para 4 be made into an Explanation.

Seconded by Mr. Krishnaswamy Rao.

Carried.

Mr. Sankara Menon.—I beg to move my next amendment, viz.—Add this after section 7 as a new section.—"If any member shall be unable to attend three consecutive ordinary meetings of the Council, it shall be lawful for Our Government to declare by notification in the Government Gazette that the seat in Council of such member has become vacant." The Indian Councils Act on which the Bill is based contains the provision and its importance is so obvious that I should consider its omission a mere oversight in drafting. 'Three consecutive ordinary meetings' means a space of 9 months and all the time we have not the benefit of the member's views and opinions.

Seconded by Mr. Thanu Pillai.

Carried.

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